UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

Commissioners: Miles W. Kirkpatrick, Chairman
Paul Rand Dixon
Everette MacIntyre
Mary Gardiner Jones
David S. Dennison, Jr.

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| In the Matter of<br><br>PHILIP MORRIS INCORPORATED,<br><br>a corporation. | DOCKET NO. C-2181<br><br>DECISION AND ORDER. |

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its Rules, now in further conformity with the procedure prescribed in §2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

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1. Respondent Philip Morris Incorporated, is a corporation organized existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at 100 Park Avenue, in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that respondent Philip Morris Incorporated, a corporation, its successors and assigns and respondent's officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale or distribution of cigarettes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising any such cigarette unless respondent makes in all advertisements of such cigarette a clear and conspicuous disclosure of the statement prescribed in Section 4 of the Public Health Cigarette Smoking Act of 1969 (Public Law 91-222) which reads:

"Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health."

A. For the purposes of this Order, the term "cigarette" shall mean (A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

B. For the purposes of this Order, the term "advertisement" shall mean all advertising in newspapers, magazines, and other periodicals published and distributed in the United States and other periodicals distributed primarily to members or units of the Armed Forces of the United States located abroad, and advertisements appearing on billboards placed or located within the United States and in other materials as specified in Sections D, E, and F.



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C. For the purposes of this Order, the term "clear and conspicuous disclosure" shall mean that

1. The language of the warning statement shall be precisely as prescribed by Congress in Section 4 of the Public Health Cigarette Smoking Act of 1969.

2. The warning statement shall be set in two horizontal lines parallel with the base of the advertisement, separated by leading equivalent to the lower case "x-height", excluding the ascending and descending letters, of the particular type size. In any case where the width of an advertisement in any printed medium is too narrow because of the columnar format, the warning statement may appear in three lines provided there is full compliance with all other requirements in this definition.

3. The warning statement in newspaper, magazine, and other periodical advertisements shall appear in Univers 47 (Fdy) type style. The type size to be employed shall be the following:

10-point type.....in newspaper, magazine, and other periodical advertisements of a trim size not larger than 65 square inches.

12-point type.....in newspaper, magazine, and other periodical advertisements of a trim size larger than 65 square inches but not larger than 110 square inches.

14-point type.....in newspaper, magazine, and other periodical advertisements of a trim size larger than 110 square inches but not larger than 180 square inches.

16-point type.....in newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches.

A double full-page or a multiple full-page advertisement in any non-tabloid newspaper shall contain a separate warning statement in 16-point type on each page. A double full-page or multiple full-page advertisement in any tabloid newspaper, magazine or other periodical shall not be required to contain more than one warning statement but the type size requirement shall be determined by the total aggregated size of the entire advertisement.



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An advertisement which occupies one full page and part of another page in any newspaper, magazine or other periodical shall not be required to contain more than one warning statement, but the type size requirement shall be determined by the total aggregated size of the entire advertisement, and the warning statement shall appear on the full page on which the advertisement appears. An advertisement which occupies part of each of two or more pages in any newspaper, magazine or other periodical shall not be required to contain more than one warning statement, but the type size requirement shall be determined by the total aggregated size of the entire advertisement, and the warning statement shall appear on that page which contains the greater (or greatest) part of the advertisement.

4. Every warning statement shall be set in a ruled rectangle. The size of the rectangle shall be determined by providing at both ends and at both top and bottom a space between the type block and the enclosing rule not less than the following spaces: where 10-point type is used in the warning statement, the rule shall be 8-points away from the type block; where 12-point type is used in the warning statement, the rule shall be 10-points away from the type block; where 14-point type is used in the warning statement, the rule shall be 12-points away from the type block; and where 16-point type is used in the warning statement, the rule shall be 14-points away from the type block. The width of the rule enclosing the rectangle shall be 1/4-point where 10-point type is used in the warning statement; 1/2-point where 12-point type is used in the warning statement; 3/4-point where 14-point type is used in the warning statement; and 1-point where 16-point type is used in the warning statement.

5. The warning statement shall be printed in black against a solid white background within the rectangle, and the enclosing rule shall be printed in black.

6. The warning statement in its rectangle in any newspaper, magazine, or other periodical advertisement shall be a separate element in each advertisement and shall not contain or include any part of any picture, design, illustration or text within the advertisement. The warning statement in its rectangle shall not be contained or included as an integral part of any specific pictorial design or illustration; in particular, it shall not be made a constituent part of a reproduction of the package of cigarettes. The warning statement in its rectangle may be printed or superimposed upon any pictorial background portion of any advertisement.



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E. On all point-of-sale promotional materials exhibited to cigarette purchasers, which have a surface containing an advertising display area of more than 36 square inches, the warning statement within its rectangle shall be included in a type size proportional to the type size specified in the nearest page size category for newspaper, magazine, and other periodical advertisements, as specified in Subsections C-1, -2, -3, -4, -5, -6, and -7. In determining the size of the advertising display area in point-of-sale promotional materials consisting of two or more pages, the total advertising display area of each page on which any printed or graphic material appears shall be aggregated, and where the aggregate of the advertising display area, on which any printed or graphic material appears, exceeds 36 square inches, the warning statement within its rectangle shall be placed on one of those pages and proportionalized to the size of that page in accordance with Section C. The warning statement shall not be required on any non-media advertising and promotional materials offered or given to consumers; nor shall the warning statement be required on any promotional materials which are not for public display or public consumer exposure, and are distributed to cigarette wholesalers, dealers, and merchants.

F. All advertising contained in non-point-of-sale leaflets, direct-mail circulars, paperback book inserts, and programs shall contain the warning statement within its rectangle in a type size proportional to the type size specified in the nearest page size category for newspaper, magazine, and other periodical advertisements, as specified in Subsections C-1, -2, -3, -4, -5, -6, and -7.

G. Sections C, D, E, and F of this Order shall become effective sixty (60) days after it is finally issued, but to meet the general and ordinary deadlines for submission of advertising copy established by the medium by or in which the advertisement is to appear, the requirements of Sections C, D, E, and F shall not be applicable (a) to newspaper, magazine, or other periodical advertising for which the closing date on which an advertiser must, according to the regular schedule of that newspaper, magazine, or other periodical, deliver the advertising material in final form to the printer, to the publisher, or as to spectacolor-type, to the production house, is less than forty-five (45) days after the date on which this Order shall become effective; (b) to advertising appearing on billboards for which copy must, according to the earliest practical date for replacement, be delivered in final form to the printer or painted or assembled on such billboards less than forty-five (45) days after the date on which this Order shall become effective, but in any event, as to advertising appearing on billboards Sections C, D, E, and F

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shall become applicable one hundred eighty (180) days from the date this Order shall become effective; (c) to advertising printed on non-point-of-sale leaflets, direct-mail circulars, paperback book inserts, and programs which is delivered in final form to the printer less than forty-five (45) days after the date on which this Order shall become effective, but in any event, as to advertising printed on non-point-of-sale leaflets, direct-mail circulars, paperback book inserts, and programs, Sections C, D, E, and F shall become applicable one hundred forty (140) days from the date this Order shall become effective; or (d) to point-of-sale promotional materials exhibited to cigarette purchasers, which have a surface containing an advertising display area of more than 36 square inches, delivered in final form to the printer less than forty-five (45) days from the date this Order shall become effective.

H. This Order shall not be applicable to signs on factories, plants, warehouses, and other facilities related to the manufacture or factory storage of cigarettes, to corporate or financial reports, or to employment advertising, or to advertising in tobacco trade publications not circulated to consumers.

II.

IT IS FURTHER ORDERED that the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions or departments.

IT IS FURTHER ORDERED that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

By the Commission; Commissioner Jones' statement is attached.

S E A L

Charles A. Tobin,
Secretary.

ISSUED: March 30, 1972



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7. The warning statement in its rectangle in any newspaper, magazine, or other periodical advertisement may be positioned anywhere within the trim area of the advertisement, but shall not be positioned in the margin of any advertisement. The rectangle shall not be positioned immediately next to, or immediately contiguous to, any rectangular designs, elements, or similar geometric forms (other than a picture of the cigarette package) or immediately contiguous to any textual matter appearing in the advertisement.

8. Blurring or illegibility of the warning statement in its rectangle occurring for reasons beyond the control of the respondent shall not be in violation of this Order.

D. On billboards of a size 24-sheets and larger, the type size of the warning statement shall be not less than 2 inches in height, and the rectangle and the enclosing rule shall be of a size, shape, contrast, and placement, proportionately corresponding to those specified in Subsections C-1, -2, -4, -5, -6, and -7 for newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches. On billboards of a size 6-, 7-, and 8-sheets the type size shall be not less than 3/4 inches, on those of a size 2- through 5-sheets the type size shall be not less than 1/2 inch, and the rectangle and the enclosing rule shall be of a size, shape, contrast and placement, proportionately corresponding to those specified in Subsections C-1, -2, -4, -5, -6, and -7 for newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches. On 1-sheet billboards the type size shall be not less than 24-points, and the rectangle and the enclosing rule shall be of a size, shape, contrast and placement, proportionately corresponding to those specified in Subsections C-1, -2, -4, -5, -6 and -7 for newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches. On all public transit side cards of any shape the type size shall be not less than 18-points, and the rectangle and the enclosing rule shall be of a size, shape, contrast and placement, proportionately corresponding to those specified in Subsections C-1, -2, -4, -5, -6, and -7 for newspaper, magazine, and other periodical advertisements of a trim size larger than 180 square inches. All public transit end cards shall comply with the minimum requirements for 1-sheet billboards. The type style on any billboard or transit card shall be Univers 47 (Fdy) or a similar font.



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## Statement of Commissioner Jones

I dissent to the Commission's acceptance of these consent agreements because of their provisions respecting the clear and conspicuous disclosure requirements of the Warning.. The Commission had no proper empirical or clinical basis on which to support the instant order provisions and hence had no reason to believe that the required disclosures would in fact be clear and conspicuous to the casual readers of the magazines in which these advertisements are intended to appear.

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